Public Works (1914) Department.

G.O. No. 160—61 I

DATED 1-4-1914.

The Notes
in this G.O. have been printed.

[Despatch Abstract.]

Water Drawn by S. I. R.

Ordered that a letter be sent to the Ry. Bd. stating that the Governor in Council is unable to revise the orders issued in G.O. 289 I/16.9.11 re: the liability of S. I. R. for payment for water drawn for Ry. purposes from Nyakonde channel Trichy Dt.

[P. W. 9.
2,000—2-10-12.]

~~Indexed.~~ a/
3/4

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government of Madras.

PUBLIC WORKS DEPARTMENT.

IRRIGATION.

Recd. } 1914. *Enclosures*

Regd. *Spare copies*

G.O. No. 160 I., 1st April 1914.

Water drawn by South Indian Railway Co.

Ordered that a letter be sent to the Railway Board stating that the Governor in Council is unable to revise the orders issued in G.O. No. 289 I., dated 16th September 1911 regarding the liability of South Indian Railway Co. for payment for water drawn for Railway purposes from Wyakondan channel, Trichinopoly district.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Irrigation.

Read—the following papers :—

I

G.O. No. 289 I., dated 16th September 1911.

Abstract.—Directing, with remarks, the levy of a charge for water drawn by South Indian Railway for the locomotive purpose from the Wyakondan channel in Trichinopoly district.

II

Letter—from the Secretary, Railway Board.
To—the Secretary to the Government of Madras, Public Works Department.
Dated—Simla, the 16th September 1912.
No.—2391/R.C.

I am directed to forward herewith copies of the marginally-noted papers on the subject of the liability of the South Indian Railway Company for payment for water drawn for railway purposes from the Wyakondan channel, Trichinopoly district.

Agent, South Indian Railway's letter No. A. C./1485/1-II/74 of 9th January 1912.
Agent, South Indian Railway's letter No. A. C./1485/1/110 of 17th July 1912.

2. On the facts as stated by the South Indian Railway Company it appears to the Railway Board that unless the Madras Government's Order No. 879 A. R., of 15th November 1879 authorizing the Company to construct a pumping station at the place and use the water for railway purposes contained a clause reserving to Government any special right of revocation, the Company, having incurred expenditure on the construction of a pumping station, which is a work of permanent character, are entitled, under the provisions of section 60 of the Indian Easements Act, to retain the right to the free use of water which the company have apparently enjoyed for over 30 years without interruption.

3. I am accordingly to request that, with the permission of His Excellency the Governor in Council, this aspect of the case may be considered and that the orders issued in the Government of Madras Order No. 289 I. of 16th September 1911 may be revised, if necessary.

Enclosures.

(i)

Letter—from the Agent, South Indian Railway.
To—the Secretary, Railway Board.
Dated—the 9th January 1912.
No.—A. C./1485/1-II/74.

I beg to inform you that in Madras G.O. No. 879 A.R., of 15th November 1879 (no spare copy is available for submission for reference) this railway was authorized with the full approval of the Government of Madras, to construct a pumping station at the Wyakondan channel near Trichinopoly Palakarai and use the water for railway purposes. Further not only was no proposal made that this railway should pay for the water taken from the channel, but the Superintending Engineer in his letter No. 630 T.O., dated 8th November 1879 (printed in the Government Order), recorded that the amount of water to be drawn off by the railway "is hardly worth considering in a channel of this capacity and ordinary discharge of the Wyakondan."

2. On the permission granted in Government Order referred to this railway expended Rs. 33,000 on the construction of a pumping station and for nearly 30 years has enjoyed the right to draw a portion of the water-supply required by it from the channel. The approximate quantity of water drawn from the channel is 13,000,000 gallons per annum.

3. In April 1910 the Executive Engineer, Trichinopoly division, forwarded a copy of Madras G.O. No. 441 I., dated 19th October 1909 (copy enclosed), fixing a certain scale of charges for the use of canal water for industrial purposes subject to certain conditions and enquired whether I would be prepared to sign the necessary agreement.

4. In the circumstances stated in paragraphs 1 and 2 *supra*, it is difficult to believe that the conditions specified in G.O. No 441 I. of 19th October 1909 were ever intended by Government to be applied to the case under reference and to overrule an arrangement made between the Madras Government and the Railway Administration 32 years ago and recorded in a Government Order. The Executive Engineer, Trichinopoly division, was therefore informed that unless the Madras Government, Public Works Department, withdraw the rights conferred on this Company in G.O. No. 879 A.R. of 15th November 1879, I was not prepared to execute the agreement sent to me which imposes nothing more or less than an additional water-tax on the Railway Administration.

5. Subsequently in October 1910 the Superintending Engineer, Trichinopoly division, forwarded the form of agreement introduced by G.O. No. 441-I. of 19th October 1909 and asked me to fill in the same and return it. Thereupon I addressed the Secretary to the Government of Madras, Public Works Department, stating that in addition to the fact that the Wyakondan scheme was entered into with the express approval of Government many years ago it must not be forgotten that we are permitted to take water from the Cauvery free and that the water in the Wyakondan channel is really only the Cauvery water intercepted at another spot a short distance from the river.

6. However in G.O. No. 289-I. of 16th September 1911 (copy enclosed) the Madras Government have decided that a charge should be made for all water taken by this railway from the Wyakondan channel.

7. Under the circumstances I beg to request that the Government of Madras may be moved to withdraw their order and exempt this railway from paying anycharges for the water taken from the Wyakondan channel.

8 In conclusion I would invite particular attention of the Railway Board to letter No. 4271 of the 29th July 1910 from the Superintending Engineer, VI Circle, Trichinopoly, embodied in G.O. No. 289 I. of the 16th September 1911 referred to above and to add that having regard to the fact the railway is in a large proportion state-owned I do not consider that the conditions specified in G.O. No. 441 I. of the 19th October 1909 were, as I have said before, intended by Government to apply to railway companies.

9. I enclose for the information of the Board copies of my letter No. A.C. 1485/1-II/105 of the 7th November 1911 to the Superintending Engineer, Trichinopoly division, and my No. A.C. 1485/1-II/106 of the 7th November 1911 to the Secretary to Government of Madras; also copy of letter No. 481, Railway, dated 29th November 1911 from the Secretary to the Government of Madras.

(ii)

Letter—from the Agent, South Indian Railway.
To—the Secretary, Railway Board.
Dated—Trichinopoly, the 17th July 1912.
No.—A. C./1485/1/110.

With reference to your letter No. 246 R.C. of 30th January 1912, I beg to inform you that as advised by the Railway Board, the legal advisers of this railway were consulted. They are of opinion that G.O No. 441 I. of 19th October 1909 would not of itself include water taken for railway purposes which cannot strictly be said to be industrial purposes but that on the reference made to the Government of Madras by the Board of Revenue of the Presidency that Government has directed that a charge should be made for all water taken by the South Indian Railway Company from the Wyakondan channel, Trichinopoly district, at the rates approved in G.O. No. 441 I. of 19th October 1909. In passing this order Government appear to have overlooked the fact that the railway is in a large proportion state-owned and that it is yearly put to considerable expense in maintaining jointly with the local municipality a system of water-works the water for which is obtained from the Cauvery.

2. Further, I would point out that the water is drawn from a well near the channel and not in the channel itself; consequently apart from the question as to whether there is any wear and tear to the berms of the channel to demand these restrictions, it might well be contended that the water is not drawn from the channel.

3. Assuming, however, that the railway can be said to be taking water from the channel I would again reiterate that the amount of water drawn off by the railway is in the words of a Government Order "hardly worth considering in a channel of this capacity and ordinary discharge of the Wyakondan".

4. Further, on the permission granted in G.O. No. 879 A.R., dated 15th November 1879, the Railway Administration expended Rs. 33,000 on a pumping station and for over 30 years has enjoyed the right to draw a portion of its water-supply from the channel for the cost of pumping.

Taking this aspect of the case there is the position which the company could take to combat (G.O. No. 289 I. of 16th September 1911) and, that is to say, that the permission originally granted to the company to take water is a license and that such license is irrevocable under section 60 of the Indian Easements Act in view of the fact that the Railway Administration acting upon the license has executed a work of a permanent character and incurred expenses in the execution.

5. Under these circumstances, I beg to request that the Government of Madras may be moved to withdraw their order and exempt this railway from paying any charges for the water taken from the Wyakondan channel.

III

Official Memorandum R.O.C. No. 942 I/12, dated 16th November 1912.

For the supply of water for locomotive purposes at the Trichinopoly junction station, sanction was accorded in G.O. No. 879 A.R., dated 15th November 1879, to work out in detail an estimate for a scheme for laying down pipes between Trichinopoly and the Wyakondan channel. Under the authority conveyed in the above Government Order the South Indian Railway Company sank a well on the bank of the Wyakondan channel from which water was pumped into a reservoir and tank in the station-yard at the junction. The arrangement was in some measure a tentative one and as it did not prove entirely satisfactory, the railway company, after prolonged negotiations, eventually participated with the Trichinopoly Municipality in a joint scheme of water-supply, and it was arranged that the company was to receive a supply of 100,000 gallons of water in each day of 24 hours. As this quantity of water was not at first delivered, the company's temporary installation on the Wyakondan channel was largely used; and owing to the uncertainty of the municipal supply, the pumping establishment at the Wyakondan channel is permanently retained by the railway company.

2 It has been usual for Government to charge only for water taken for agricultural purposes. But in view of the general movement in the direction of industrial development in the country, it was considered necessary to charge for water taken for industrial purposes from Government irrigation and navigation canals, and a scale of charges to be levied was fixed in G.O. No. 441 I., dated 19th October 1909.

3. The question then arose as to whether the South Indian Railway Company should not pay for water taken from the Wyakondan channel for non-domestic purposes such as filling engines and tanks. It was decided in G.O. No. 289 I., dated 16th September 1911, that a charge should be made for all water taken by the railway company from the channel. The Agent, South Indian Railway, contends that the railway company should be exempt from paying any charges for the water taken from the Wyakondan channel. The company construes the order of the Madras Government No. 879 A.R., dated 15th November 1879, as an authority to instal a pumping station at the place and use the water for railway purposes; and it is argued that, as the above order did not contain a claim reserving to Government any special right of revocation, the company having incurred expenditure on the erection of a pumping station which is a work of permanent character is entitled under the Indian Easements Act to retain the right to the free use of water which they have enjoyed for over 30 years without interruption. The above position the Government are unable to accept. The reasons are :—

(i) The order of 1879 did not convey any authority to construct a pumping station but only a direction to work out a detailed scheme. Thus, no license or permission was given in 1879.

(ii) Because the company was allowed to take water so long without consideration and as a matter of grace, it cannot operate as a bar to the withdrawal of the concession at any time at the option of the Government.

5. The Government Solicitor is requested to lay the papers before the Advocate-General and obtain his opinion on the case.

H. E. Clerk,
Secretary to Govt., Irrigation Branch.

To the Government Solicitor,
with current file in original G.Os. Nos. 289 I.,
dated 16th September 1911, 441 I.,
dated 19th October 1909 and 879 A.R.,
dated 15th November 1879 to be kindly returned.

IV

Letter—from the Hon'ble Mr. F. H. M. Corbet, Advocate-General, Madras.

To—the Secretary to Government, Public Works Department (Irrigation Branch).

Dated—the 9th December 1912.

No.—690.

With reference to Government Memorandum R.O.C. No. 942 I., dated 16th November 1912, I have the honour to enquire whether it is intended to levy the proposed water charges in pursuance of any specific enactment or under the general powers of the Government.

In the first case, I should be glad to have a copy of the rules issued under the enactment relied on.

I would also like to be informed whether the well of the pumping-station draws its water from the Wyakondan channel by percolation or through pipes.

V

Official Memorandum R.O.C. No. 942 I/12, dated 14th December 1912.

The Superintending Engineer, VI Circle, is requested to report whether the well of the South Indian Railway pumping station at Wyakondan draws its water from the Wyakondan channel by percolation or through pipes.

(By Order.)

F. E. Morgan,
Under Secretary to Government.

To the Superintending Engineer, VI Circle.

VI

Letter—from the Agent, South Indian Railway.

To—the Secretary to Government, Public Works Department (Irrigation Branch).

Dated—the 22nd January 1913.

No.—A. C. 1485/1-II/123.

With reference to G.O. No. 289 I. of 16th September 1911, I have the honour to refer you to the Railway Board's letter No. 2391 R.C. of 16th September 1912 to your address and to enquire if the Government has been pleased to reconsider the matter and what orders have been passed.

VII

Letter—from D. Marshall, Esq., Deputy Secretary to Government, Public Works Department.
To—the Agent, South Indian Railway.
Dated—the 3rd February 1913.
No.—195 Ry.-1.

With reference to your letter No. A.C. 1485/1-II/123, dated 22nd January 1913, regarding the Wyakondan channel supply I am directed to inform you that the matter is still under the consideration of Government.

VIII

Letter—from C. Peddie, Esq., Executive Engineer, Trichinopoly division.
To—the Superintending Engineer, VI Circle.
Dated—the 29th January 1913.
No.—124-S.E.

With reference to your Endorsement No. 9054/1668, dated 18th December 1912, I have the honour to inform you that the well of the South Indian Railway is connected with the Wyakondan channel by an open leading channel passing through four sets of iron grating marked G1., G2, G3, G4 in plan fixed between corresponding rows of piles.

No. 211 *C.E.*/1668, *dated the* 2nd *February* 1913.

Forwarded to the Chief Engineer for Irrigation, with reference to his Memorandum R.O.C. No. 942 I., dated 14th December 1912.

S. B. Murray,
Superintending Engineer, VI Circle.

IX

Letter—from the Hon'ble Mr. H. E. Clerk, Secretary to Government, Public Works Department (Irrigation Branch).
To—the Honourable the Advocate-General, Madras.
Dated—the 5th March 1913.
No.—R.O.C. 942-I/12.

With reference to your letter No. 690, dated 9th December 1912, regarding the levy of charges for water taken by the South Indian Railway from the Wyakondan channel in the Trichinopoly district, I am directed to inform you that it is intended to levy the charges under the general powers of the Government under which G.O. No. 441 I., dated 19th October 1909,—copy already furnished—was issued.

2. The well of the railway company is connected with the Wyakondan channel by an open leading channel passing through four sets of iron gratings fixed between rows of piles. A sketch of the South Indian Railway Pumping Station and well, etc., is enclosed for reference and return.

3. I am to draw your attention to criminal revision case No. 390 of 1911 in which the High Court have decided that water in a Government canal is in the possession of Government and abstraction of it without their permission constitutes the charge of "theft"; and also to section 2 (i) of Act III of 1905 according to which all canals and water-courses and all standing and flowing water (save in so far as the same are the property of the persons specified in that section) are the property of Government subject only to the reservations mentioned in the last clause of the sub-section.

X

Letter—from W. O. David, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Public Works Department (Irrigation Branch).
Dated—the 29th March 1913.
No.—389.

With reference to Official Memorandum R.O.C. No. 942 I., dated 16th November 1912, I laid the papers forwarded therewith before the Advocate-General and have now the honour to forward herewith a copy of his opinion on the case.

I return the papers which accompanied such memorandum.

Enclosure.

Opinion 651.

1. The charge cannot be recovered as a tax, as Madras Act VII of 1865, the only Act which empowers the levy of a water-cess, is restricted to water used for irrigation.

2. Here there is no contract to pay. The Government, in my view, is not at liberty to withhold the water in order to compel the railway company to enter into an engagement to pay for it.

3. If as a matter of fact the works were constructed and the water has been utilised these 30 years substantially in pursuance of the G.O. No. 879 of 15th November 1879, one of two consequences must follow.

4. There may have been a license express or implied; and, in that case, as the licensee, acting upon the license, has executed a work of a permanent character and incurred expense in the execution, the license cannot now be revoked; section 60 of Act V of 1882.

5. On the other hand an easement may have been created, and, in that case, unless the power to revoke was expressly reserved, the easement cannot be put an end to: section 39 of Act V of 1882.

6. It is a question of fact whether the pumping station has been erected with the consent of the Government. Whether the consent is evidenced by the Government order or by subsequent correspondence or by both is immaterial. Where, as in this instance, the Railway Company and the Government are closely connected, and Government sanction has to be sought at every turn, it can hardly be suggested that there was no consent, express or implied. The legal effect, of course, is the same

7. As to the claim of the Railway Company to a supply of water even in times of scarcity, the rights of the company must in any case be subject to the reservations in section 2 of Act V of 1882.

F. H. M. Corbet,
Advocate-General.

Madras,
28th March 1913.

XI

Official Memorandum No. 628 I/13-1, dated 21st May 1913.

With reference to the Government Solicitor's letter No. 389, dated 29th March 1913, forwarding the opinion of the Advocate-General in regard to the levy of charges for water taken by the South Indian Railway from the Wyakondan channel it is observed that the question whether the present company is a new company and not the successor or assignee of the Company of 1879 has not been considered. If it be held that they are the successors or assigns of the old company, it would appear with reference to the last clause of section 15 of the Easements Act V of 1882 that to acquire an easement the right should have been exercised for a period of 60 years. If the present company were deemed to be a new company, the arguments in paragraphs 4 and 5 of the Advocate-General's opinion seem inapplicable.

2. The Government Solicitor is requested to place the above facts before the Advocate-General and obtain his further opinion on the case.

H. E. Clerk,
Joint Secy. to Govt. Irrigation Branch.

To the Government Solicitor.

XII

Letter—from the Agent, South Indian Railway, Trichinopoly.
To—the Superintending Engineer, VI Circle.
Dated—Trichinopoly, the 4th July 1913.
No.—A.C. 1485/1/II/131.

In reply to your letter No. 5698/1668 of the 3rd instant, regarding water taken from the Wyakondan Channel, I have the honour to inform you that I have not yet received any final reply from the Government of Madras, but would suggest that you enquire of that Government, referring them to my letter No. A.C. 1485/1/II 123 of January 22nd, 1913, to the Secretary to the Government of Madras, Public Works Department.

No. 1044 *C.E.*/1668, *dated* 16*th July* 1913.

Forwarded to the Chief Engineer for Irrigation in continuation of this office No. 211 C.E./1668, dated 2nd February 1913, with the request that he will state whether any orders have been passed regarding the charge to be made to the railway for the use of the water from the Wyakondan channel.

S. B. Murray,
Superintending Engineer VI Circle.

XIII

Official Memorandum No. 628-I/13-2, dated 29th July 1913.

With reference to his endorsement No. 1044 C.E./1668, dated 16th July 1913 the Superintending Engineer, VI Circle, is informed that the question of the charge to be made to the South Indian Railway for the use of the water from the Wyakondan channel is still under the consideration of Government.

(By Order.)

F. E. Morgan,
Under Secy. to Govt., Irrigation Branch.

To the Superintending Engineer, VI Circle.

XIV

Official Memorandum No. 628 I./13-3, dated 20th August 1913.

The Hon'ble the Advocate-General is requested to expedite the opinion called for in Official Memorandum No. 628 I/13-1, dated 21st May 1913, regarding the charge for water taken by the South Indian Railway Company from the Wyakondan channel, Trichinopoly district.

(By Order.)

H. E. Clerk,
Joint Secy. to Govt., Irrigation Branch.

To the Advocate-General, Madras,
through the Government Solicitor.

XV

Official Memorandum No. 628 I/13-4, dated 24th September 1913.

The attention of the Government Solicitor is invited to Official Memorandum, No. 628 I./13-1, dated 21st May 1913 and No 628 I./13-3, dated 20th August 1913, regarding the levy of charges for water taken by the South Indian Railway Company from the Wyakondan channel, Trichinopoly district, and he is requested to state for the information of Government when the opinion of the Honourable the Advocate-General referred to therein may be expected.

(By Order.)

F. E. Morgan,
Under Secy. to Govt., Irrigation Branch.

To the Government Solicitor.

XVI

Letter—from W. O. David, Government Solicitor, Madras.
To—the Secretary to Government, Public Works Department (Irrigation.)
Dated—Madras, the 21st October 1913.
No.—1097.

With reference to the official memorandum of Government R.O.C. No. 628 I. /13-1, dated the 21st May last, I have the honour to forward herewith a copy of the further opinion of the Honourable the Advocate-General on the question therein referred to.

2. I return the G.Os. Nos. 879, dated 15th November 1879, 441 I., dated 19th October 1909 and 289, I., dated 16th September 1911, which were sent in connection with the above memorandum.

Enclosure.

Opinion No. 150.

Whether the present company is a new company or not is immaterial provided there has been a transfer by the old company to the new of all the property of the old company.

For the rest I adhere to what I said in paragraphs 4 and 5 of my opinion of 28th March 1913.

Madras.
20th October 1913.

F. H. M. Corbet,
Advocate-General.

XVII

Letter—from S. B. Murray, Esq., Superintending Engineer, VI Circle.
To—the Chief Engineer, for Irrigation.
Dated—Trichinopoly, the 5th December 1913.
No.—1765-C.E./1668.

With reference to your Memorandum No. 628 I./13-2, dated 29th July 1913, I have the honour to request you will inform me whether the question of the charge to be made to the South Indian Railway for the use of the water from the Wyakondan channel has been decided by the Government.

XVIII

Official Memorandum No. 628 I. 13-6, dated 12th December 1913.

With reference to his letter No. 1765 C.E., 1668, dated 5th December 1913, the Superintending Engineer, VI Circle, is informed that the question of the charges to be levied on the South Indian Railway for the water taken from the Wyakondan channel is still under the consideration of Government

(By Order.)

F. E. Morgan,
Under Secretary to Government, Irrigation Branch.

To the Superintending Engineer, VI Circle.

XIX

Official Memorandum No. 628 I., /13-7, dated 9th January 1914.

Contract between the Secretary to State and the South Indian Railway, dated 24th November 1890, and 21st December 1910.

Copy of the Advocate-General's opinion, dated 11th April 1910, forwarded with Government Solicitor's endorsment No. 526, dated 12th April 1910.

With reference to his letter No. 1097, dated 21st October 1913, forwarding the opinion of the Hon'ble the Advocate General, No. 156, dated 20th October 1913, in regard to the levy of a charge for the water taken by the South Indian Railway, from the Wyakondan channel, Trichinopoly district, the marginally noted papers are forwarded to the Government Solicitor, Madras; and his attention is invited to the opinion, dated

11th April 1910, of the then Advocate-General on the question of the liability of the present company to fulfil an undertaking given in 1873 by the Carnatic Railway Company in regard to the replacement of certain level crossings by over-bridges in the City of Madras. From this opinion it will be seen that upon the purchase of the railway by the Secretary of State in 1890, the obligations and liabilities of the previous company necessarily ceased to exist, that the ownership of the property is vested in the Secretary of State and that the contract with the present company is merely for the working and maintenance of the open railway.

2. As the present company cannot claim to stand ~~in~~ the shoes of the old company, the question whether there was a license to the old company and whether it was irrevocable, referred to in paragraph 4 of the Advocate-General's opinion No. 651, dated 28th March 1913, would appear to be immaterial. Assuming that there was an irrevocable license, it came to an end when the Secretary of State purchased the old concern in 1890. The only question now is whether, under the existing contract, the Secretary of State has expressly or impliedly granted any right to the use of water. It cannot possibly be an irrevocable license now because the present company—a totally new and distinct concern unconnected with the old company—has apparently executed no work after the date of the contract. If the present company is to be supposed to have a license (though not irrevocable), it can now be revoked.

3. In paragraph 5 of his opinion above referred to, the Advocate-General states that an easement may have been created and that it cannot be put an end to unless the power to revoke was expressly reserved. But it would be doubtful whether that there is a grant of water right to the present company, not in the nature of a license, but in the nature of an easement (either in gross or appurtenant to the land). As the Railway Company are merely contractors for working the system and there is nothing in the way of a demise of any lands to the company, it does not appear that the right claimed can be an easement appurtenant to any land. Section 13 (*a*) of the Easements Act cannot apply, because no immoveable property has been transferred and the right cannot be said to be necessary or indispensable. Section 13 (*b*) cannot also apply, because in addition to the reasons given above, it is not a continuous easement. As to an easement in gross to take water from the channel for working the railway, there is no express mention of any such right in the contract.

4. The question to be considered seems to be whether under the present contract with the company, there is any implied grant of a right to all such facilities in the way of a supply of water as the old company had. All works connected with the purchased railway have, under the contract, been handed over to the new company.

5. The Government Solicitor is requested to lay the papers again before the Advocate-General and obtain his further opinion on the case with reference to the foregoing remarks.

W. M. Ellis, Col., R.E.,
Ag. Joint Secretary to Government, P.W.D.
(Irrigation Branch).

To the Government Solicitor, Madras
with the papers referred to.

Enclosure.

[In re MEMORANDUM No. 154, R.M. (Public Works Department), dated 5th April 1910.]

Liability of the present South Indian Railway Company to observe the covenants of the Carnatic Railway Company.

The undertaking given to the Government by the Agent of the Carnatic Railway Company on the 4th December 1873, to replace the level crossings at Sydenham's Road and Whannel's Road by overbridges whenever required by the Government to do so, was no doubt a contract binding on that company. Upon the amalgamation of the Carnatic Company with the Great Southern India Railway Company, all covenants, contracts, obligations and liabilities of the Carnatic company were transferred by section 7 of the South Indian Railway Act, 1874, to the South Indian Railway company. But upon the purchase of the South Indian Railway system in

1890 by the Secretary of State, these obligations and liabilities necessarily ceased to exist. The contract of the 24th November 1890 is between the Secretary of State and the new South Indian Railway company, and not with the old South Indian Railway company incorporated under the Act of 1874 (Sec. cl. 1 (*b*) and (*c*) of the Indenture). The contract with the present South Indian Railway company is merely for the working and maintenance of the open system and the completion of the construction of the unfinished railway. The ownership of the railway is vested in the Secretary of State and the company is not even a lessee of the railway. No obligation can be laid upon the new company except such as can be found within the four corners of the Indenture of the 24th November 1890. I am unable to find anything in this Indenture which can be held to impose any obligation upon this company to carry out at its cost the undertaking given in 1873 by the (now defunct) Carnatic Railway company. The present company as contractors may under clause 27 of the Indenture, be required by the Government to carry out the additions that may be necessary for the safety of the public, but the funds necessary for the execution of such work have to be supplied by the Secretary of State (see also cl. 46 and 47 of the Indenture).

I am therefore of opinion that the agent of the South Indian Railway Company is right in his contention that the cost of the construction of the proposed overbridges must be met by the Government and not by the railway company.

Madras,
11*th April* 1910.

P. S. Sivaswami Ayyar,
Advocate-General.

XX

Official Memorandum No. 628 I/-13-10., dated 10th February 1914.

The Government Solicitor, Madras, is requested to report when the further opinion of the Honourable the Advocate-General on the case relating to the levy of a charge for the water taken by the South Indian Railway from the Wyakondan channel, Trichinopoly district called for in Official Memorandum No. 623 I/13 dated 7th January 1914 may be expected.

(By Order.)

F. E. Morgan,
Under Secretary to Govt., Irrigation Branch.

To the Government Solicitor, Madras.

XXI

Letter—from M. R. Khareghat, Esq., Superintending Engineer, VI Circle.
To—the Chief Engineer for Irrigation.
Dated—Trichinopoly, the 24th February 1914.
No.—286 C.E./1668.

With reference to the correspondence ending with your Memorandum No. 628–I/13–6, dated 13th December 1913, I have the honour to enquire if any decision has been come to, regarding the question of the charges to be levied on the South Indian Railway for the water taken from the Wyakondan channel.

XXII

Official Memorandum No. 628 I/13-11., dated 27th February 1914.

With reference to his letter No. 286 C.E./1668, dated 24th February 1914, the Superintending Enginesr, VI Circle, is informed that the question of the charges to be levied on the South Indian Railway for water taken from the Wyakondan channel is still under the consideration of Government.

(By Order.)

F. E. Morgan,
Under Secretary to Govt., Irrigation Branch.

To the Superintending Engineer, VI Circle.

XXIII

Letter— from W. O. David, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Public Works (Irrigation) Department.
Dated—the 3rd March 1914.
No.—208.

Abstract.—Forwarding the following opinion of the Advocate-General, No. 58, with reference to the Official Memorandum No. 628-I/13-9, dated 9th January 1914.

Enclosure.

Opinion No. 58, *dated 2nd March* 1914.

The papers now sent to me throw a new light on the controversy ; and if they had been forwarded to me originally my opinion would have been different.

Whatever may have been the rights of the South Indian Railway Company before the 24th of November 1890, their position has been completely altered by the purchase of the old Company's undertaking by the Government, and by the new Company's contract with the Government on that date.

No question of easement or license arises in their favour, and the Government can charge for water taken by the Company from the Wyakondan channel.

F. H. M. Corbet,
Advocate-General.

Order—No. 160 I., dated 1st April 1914.

Ordered that the following reply be sent.

[Here enter No. 161 I., dated 1st April 1914.]

(True Extract.)

W. M. Ellis, Col., R.E.,
Ag. Joint Secretary to Govt., P.W.D.,
Irrigation Branch.

To the Chief Engineer for Irrigation.
,, Superintending Engineer, VI Circle.
,, Board of Revenue (Revenue Settlement).
,, Revenue Department.
,, Public Works Department,

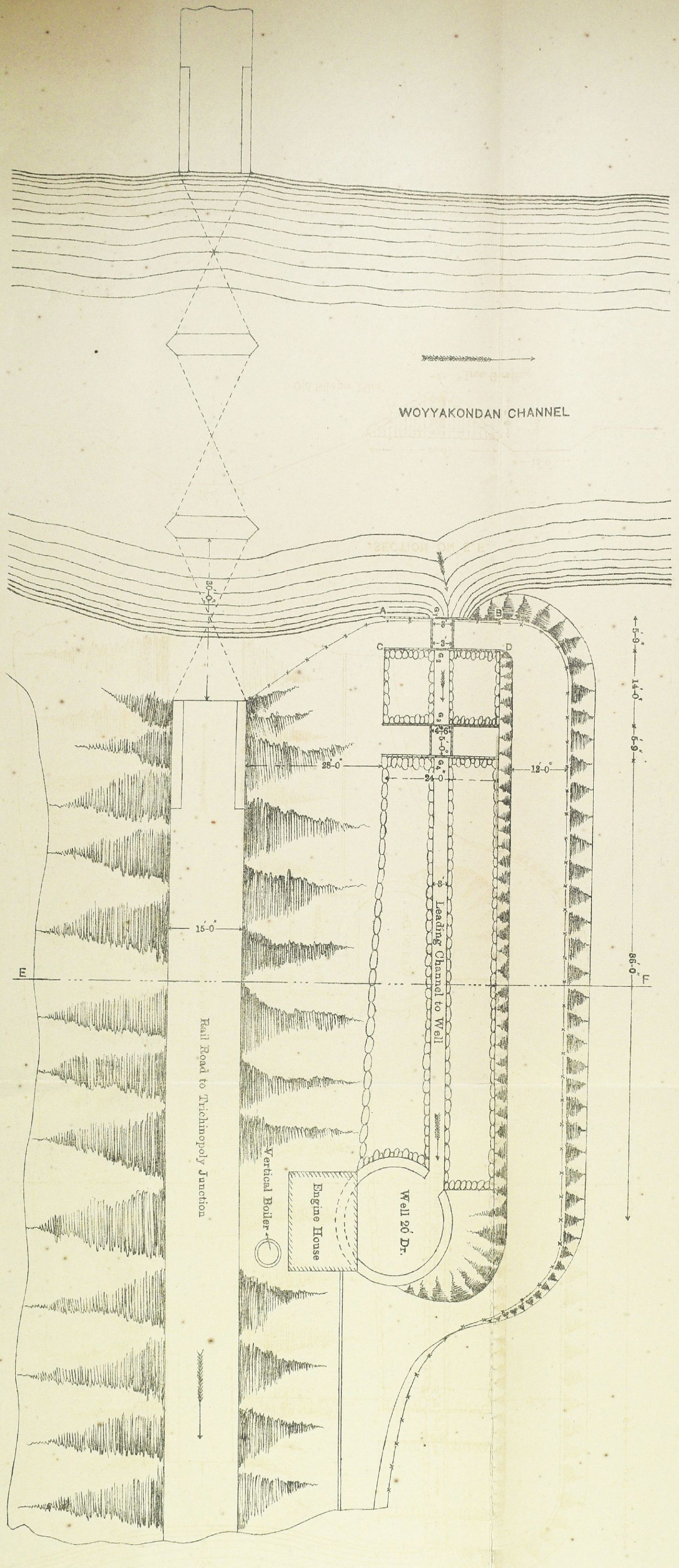
Forwarded to the

(By Order)

Deputy Registrar.

SKETCH
OF
S. I. R. PUMPING STATION & WELL ETC.
ON
RIGHT BANK OF WOYYAKONDAN CHANNEL

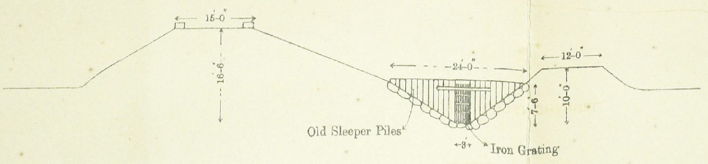
Scale $\frac{1}{200}$



(Signed) K. VENKATACHELAM
Overseer P. W. D.
23-1-13.

(Signed)
Executive Engineer,
Trichinopoly Division,
29-1-13.

SECTION ON E.F.



Reg. No. 863
Copies ... 150

Zinco., Survey Office, Madras.
1914.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

No. 161 I.

Irrigation.

LETTER—from

THE HON'BLE COL. W. M. ELLIS, R.E.,

Ag Secretary to Government of Madras,

Public Works Department (Irrigation Branch),

To

THE SECRETARY TO THE RAILWAY BOARD,

SIMLA.

SIR,

In reply to your letter No. 2391/R.C., dated 16th September 1912, on th subject of the liability of the South Indian Railway Company, for payment for water drawn for Railway purposes from the Wyakondan channel, Trichinopoly district, I am directed to say that, upon the purchase of the South Indian Railway system on the 24th November 1890 by the Secretary of State, the rights and liabilities of the previous Company necessarily ceased to exist, that the ownership of the property is vested in the Secretary of State, that the contract with the present Company is merely for the working and maintenance of the open system and the completion of the construction of the unfinished railway and that the Company is not even a lessee of the railway. The Government are advised by the Advocate-General that whatever may have been the rights of the South Indian Railway Company before the 24th November 1890, its position has now been completely altered ; no question of easement or license arises in its favour ; and the Government can charge for water taken from the Wyakondan channel. The Governor in Council regrets therefore that he is unable to revise the orders issued in G.O. No. 289 I., dated 16th September 1911. He is however willing to make a nominal charge for the water in the present case provided the rights of this Government to levy a charge are admitted.

I have the honour to be,

Sir,

Your most obedient servant,

Ag. Secretary to Government, P.W.D.

(Irrigation Branch).

MADRAS,
1st April 1914.

Documents accompanying—
Nil.

PUBLIC WORKS DEPARTMENT.
(IRRIGATION BRANCH).

NOTES CONNECTED WITH G.O. Nos. 160–61 I., DATED 1ST APRIL 1914.

[SUBJECT.—*Charge for water taken by the South Indian Railway from the Wyacondan channel, Trichinopoly district.*]

PUBLIC WORKS DEPARTMENT.

From the Railway Board No. 239 *R.C., dated* 16*th September* 1912.

Deputy Secretary—

The letter from the Railway Board may be forwarded to the Public Works Department (Irrigation) for *remarks* in the first instance.

T.V.N.—20-9-12.

D. MARSHALL—2-10-12.

To the Public Works Department (Irrigation) u.o.

PUBLIC WORKS DEPARTMENT
(IRRIGATION BRANCH).

Under Secretary—

The Railway Board request a revision, if necessary, of the order issued in G.O. No. 289 I., dated 16th September 1911, directing the levy of a charge for water taken by the South Indian Railway Company for locomotive purposes from the Wyacondan channel in the Trichinopoly district, in consideration of the fact that the company, having incurred expenditure on the construction of a work of permanent character, are entitled under section 60 of the Indian Easements Act to retain the right to the free use of water, unless the order of 1879 authorising the construction of a pumping station contained a clause reserving to Government any special right of revocation.

G.O. No. 879 A.R., dated 15th November 1879.

2. For a brief account of the circumstances under which the Wyacondan pumping scheme was installed, reference is solicited to paragraphs 2 and 3 on pages 2 and 3 of Notes to G.O. No. 289 I., dated 16th September 1911.

3. Section 60 of the Indian Easements Act (No. V of 1882) quoted by the Agent runs as follows :—

"A license may be revoked by the grantor, unless—

(*a*) it is coupled with a transfer of property and such transfer is in force ;"

(*b*) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

As the South Indian Railway Company's contention with regard to the payment of the water-rate now ordered is based on this section, it is presupposed —

(i) that the order issued in G.O. No 879 A.R., dated 15th November 1879, to work out in detail and estimate for the Wyacondan pumping scheme is a license granted to the company for taking water free of charge from the channel ; and

(ii) That the order issued in G.O. No. 289 I., dated 16th September 1911, to levy a charge for water taken from the Wyacondan channel is a revocation of that license.

It is not clear how the order of 1879 which is only a departmental order to work out in detail a scheme proposed by the railway company can be tak ento be a license granted to the company for the free use of water. As the work was done with the knowledge of Government, it may be taken to be a license, but it is clear from the definition of 'license' given in section 52 of the Easements Act, that a 'license' only makes an action lawful, which, without it, was unlawful and passes no interest in land or property. The railway company cannot claim to have acquired any interest in the property, *i.e.*, the Wyacondan channel water.

G.O. No. 879 A.R., dated 15th November 1879.

Further what is now required is not to revoke the license, but only to charge for the water taken from the channel. It is not known how the railway company could have acquired a right to the free use of water. Till 1909 no charge for water taken from Government irrigation sources except for agricultural purposes was made. In G.O. No. 441 I., dated 19th October 1909, it was decided that, in view of the general movement in the direction of industrial development, a charge for water taken for industrial purposes from Government irrigation and navigation sources should be made at the rates approved therein. As observed by the Revenue Secretary (the Hon'ble Mr. A. G. Cardew), the permission to take water was given in 1879 "without consideration." It is doubtful whether, in cases of this kind, the so-called license can prevent the owner from charging a rent whenever he wants to do so.

Page 6 of Notes to G.O. No. 289 I., dated 16th September 1911.

4. In these circumstances, it is for orders whether the question may be referred to the Advocate-General for opinion.

5. If however the proposal made by the Hon'ble Sir John Atkinson that Railway companies may be exempted from all charges for water taken from Government sources be agreed to, the orders already issued to levy charge for water taken from the Wyacondan * channel at Trichinopoly and from the Ninjal † Madugu at Chingleput may be cancelled. Before referring the question to the Advocate-General, the file may be circulated to the Honourable Member for orders with reference to his note, dated 19th April 1912, on the proposal to exempt railway companies from all charge of water.

* G.O. No. 289 I., dated 16th September 1911.

† G.O. No. 28 I., dated 22nd January 1912.

A.V.S.—17-10-12.

P.K.S.—17-10-12.

Secretary—

The Railway Board have, I think, been misled by not having a copy—G.O. No. 879 A.R., dated 15th November 1879. This Government Order did not authorize the railway to construct a pumping station, but only ordered that the scheme should be worked out in detail and be estimated for.

No license ever having been granted, section 60 of the Indian Easements Act does not seem to affect the case.

This question of whether the railway company have acquired any right to take water free of charge might be referred to the Advocate-General.

F. E. Morgan—23-10-12.

Honourable Member—

I have throughout held that in this case we should allow the railway a certain amount of water from the Wyacondan channel free and that they should be debarred from increasing the amount drawn off. The original amount was 75 gallons per minute and this would be a suitable amount to give free with the proviso that no increase of quantity would be allowed. The Hon'ble Mr. Atkinson is in favour of allowing water free (presumably in small quantities). Honourable Member is unwilling to accept a general proposition of this sort. The circumstances in this case are peculiar and warrant a free grant of a limited amount of water.

H. E. Clerk—23-10-12.

I would maintain our position if the Advocate-General thinks it is sound at law. One point is that the present company is a new company and not the successor or assignee of the company in existence in 1879. The company made a strong point of this in connection with the case about the overbridge at Bezwada. Another point is that no license or permission was given in 1879. Please refer to the Advocate-General making the statement of case full and complete. I am not disposed to make any concessions to the South Indian Railway.

H. A. S[tuart]—27-10-12.

Under Secretary—

Secretary—

A draft official memorandum is submitted which, if approved, may be sent to Revenue for acceptance.

A.V.S.—2-11-12.

P.K.S.—4-11-12.

F.E.M.—4-11-12.

H.E.C.—4-11-12.

To the Revenue Department u.o.

Revenue Department.

Under Secretary—

The draft official memorandum may, it is submitted, be accepted in Revenue.

B.M.R.—7-11-12.

R.S.—7-11-12.

Secretary—

L. J. P. Jolly—9-11-12.

L. M. Wynch—11-11-12.

To the Public Works Department (Irrigation) u.o.

Public Works Department
(Irrigation Branch).

Under Secretary—

The draft official memorandum may be circulated to the Honourable Member.

P.K.S.—12-11-12.

Honourable Member—

F.E.M.—12-11-12.

We had better omit reason (iii) at present.

H. A. S[tuart]—13-11-12.

Under Secretary—

The official memorandum with reason (iii) omitted, may issue.

A.V.S.—14-11-12.

P.K.S.—14-11-12.

Issue.

F.E.M.—14-11-12.

[Official Memorandum issued as R.O.C. No. 942-I./12, dated 16th November 1912.]

From the Advocate-General, Madras, No. 690, *dated 9th December* 1912.

Under Secretary—

The Honourable the Advocate-General requests information on the following two points in connection with the question of levying charges for water taken by the South Indian Railway Company from the Wyacondon channel in the Trichinopoly district, referred to him—

(i) whether it is intended to levy the charges in pursuance of any specific enactment or under the general powers of Government, and

(ii) whether the well of the pumping-station draws its water from the Wyacondan channel by percolation or through pipes.

2. As regards (i) it is submitted that there is no specific enactment under which the water charges are proposed to be levied. It is only under the general powers of Government, under which G.O. No. 441 I., dated 19th October 1909, was issued, the charges under reference are intended to be levied. The Advocate-General may be informed accordingly.

3. As for (ii) no information is available in the office. The Chief Engineer for Irrigation may perhaps be able to furnish the information required. If he cannot, the Superintending Engineer may be asked.

A.V.S.—11-12-12.

P.K.S.—12-12-12.

Joint Secretary—

The original order sanctioned the preparation of an estimate for pumping from a well sunk in the bank of the channel, the Advocate-General has not returned the Agent's letter to the Railway Board, but I think the Agent drew attention to the fact that water has not been taken direct from the channel, but from a well by the side. For orders whether a reference should be made to the Superintending Engineer on the point.

F.E.M.—12-12-12.

The Superintending Engineer must be asked for the information.

H.E.C.—13-12-12.

Under Secretary—

A draft official memorandum to the Superintending Engineer, VI Circle, is submitted for approval.

A.V.S.—13-12-12.

F.E.M.—13-12-12.

[Memorandum R.O.C. No. 942-I./12, dated 14th December 1912]

Manager—

A reminder is submitted for approval and orders to issue.

A.V.S.—4-1-13.

Issue.

P.K.S.—6-1-13.

Under Secretary—

As the reminder issued on 7th January 1913 has not yet been returned with a reply, a fresh reminder is submitted below for approval and orders to issue.

A.V.S.—18-1-13.

F.E.M.—20-1-13.

From the Superintending Engineer, VI Circle, dated 19th January 1913, *No.* 63-*C.E.*/1668, *reply on reminder, dated* 6*th January* 1913.

Under Secretary—

Submitted. The reminder approved above need not issue, since a reply has been received. The Superintending Engineer promises a report in about 20 days. It is submitted that the reference may lie over till 15th February 1913.

A.V.S.—21-1-13.

Yes.

F.E.M.—21-1-13.

From the Public Works Department (Railway) u.o., dated 22*nd January* 1913, *D. No.* 261/12-1.

Under Secretary—

The disposal awaits report called for from Superintending Engineer.

2. A u.o. note returning with reply to the reminder read above is submitted for approval and orders to issue.

A.V.S.—29-1-13.

F.E.M.—29-1-13.

[U.O. note returned to Public Works Department (Railway) with reply as R.O.C. No. 942-I./12, dated 29th January 1913.]

Under Secretary—

The question raised in the railway reference referred to in the reminder was referred to the Advocate-General for opinion. He required further information on certain points, a report on which has been called for from the Superintending Engineer, VI Circle. The Superintending Engineer is ordered to be reminded next on the 15th proximo. With these remarks the reminder may be returned to Public Works (Railway) u.o.

A.V.S.—29-1-13.

F.E.M.—29-1-13.

To the Public Works Department (Railway) u.o.

Public Works Department (Railway).

From the Agent, South Indian Railway, dated 22*nd January* 1913, *No. A.C.* 1485/1-11/123.

Deputy Secretary—

A draft reply to the Agent, South Indian Railway, is submitted. After issue the papers may, it is submitted, be passed on to Irrigation to be added on to the main file.

A.J.J.—31-1-13.

M.A.R.—1-2-13.

D.M.—3-2-13.

To the Public Works Department (Irrigation) u.o.

Public Works Department (Irrigation Branch).

Under Secretary—

The main file is in Revenue and its return may be awaited.

A.V.S.—7-2-13.

F.E.M.—8-2-13.

From the Superintending Engineer, VI Circle, No. 211 *C.E.*/1668, *dated 2nd February* 1913.

Under Secretary—

Reference is solicited to the Advocate-General's letter, No. 690, dated 9th December 1912, and to notes in page 4 *ante*. The Superintending Engineer, with his endorsement read above, forwards a copy of letter No. 124 S.E., dated [illegible]th January 1913, from the Executive Engineer, Trichinopoly division, from which it will be seen that the railway well at Wyacondan is connected with the Wyacondan channel by an open leading channel. It is thus evident that the well draws its water from the channel direct and not by percolation.

2. A draft reply to the Advocate-General is submitted which, if approved, may be sent to Revenue for acceptance, especially with reference to the question of the powers under which it is proposed to levy the charges.

A.V.S.—14-2-13.

P.K.S.—14-2-13.

F.E.M.—14-2-13.

H.E.C.—14-2-13.

To the Revenue Department u.o.

Revenue Department.

Under Secretary—

The draft letter to the Advocate-General may, it is submitted, be accepted in Revenue.

H. A. Watson—25-2-13.

2. The charge proposed to be levied can only be under the general powers of Government and not under Act VII of 1865 (Irrigation Cess Act) which authorises the levy of water cess when the water from a Government source is used for purposes of "*Irrigation*" only.

B.M.R.—19-2-13.

It is not however clear what the *general powers of Government* are to levy the charge when *water is not used for irrigation.* In connection with a suit filed against one Gunny Thathayya who took water from the Kistna Eastern Delta for his rice factory at Bezwada without permission and would not pay the charge demanded, the question of the power of Government to levy the charge was discussed. It was considered whether the suit should be based on "implied contract of sale of water" or on "tort" and it was decided to base the claim on "tort". Please see G.O. No. 220 I., dated 17th July 1911, and notes thereto and also G.O. No. 340 I., dated 2nd November 1911, and notes. It is not known what the result of the suit was.

2. In criminal revision case No. 390 of 1911 the High Court have decided that water in a Government canal is in the possession of Government and abstraction of it without their permission constitutes the charge of "theft" *vide* G.O. No. 3790, dated 19th December 1912. This would apply to cases where water is used for irrigation or for other purposes.

R.S.—21-2-13.

Secretary—

The water in the channel is according to the latest rulings the property of Government and the levy of charges would be proper.

The draft may be approved in Revenue.

H. A. Watson—25-2-13.

The Advocate-General's attention might perhaps be drawn to the ruling referred to in the Deputy Registrar's note *ante* and also to section 2 (i) of Act III of 1905 according to which all canals and water courses and all standing and flowing water,

(save in so far as the same are the property of the persons specified in that section) are the property of Government, subject only to the reservations mentioned in the last clause of the sub-section.

L. M. Wynch—26-2-13.

To the Public Works Department (Irrigation) u.o.

Public Works Department
(Irrigation Branch).

Under Secretary—
Joint Secretary—

With reference to Revenue remarks above, a new paragraph (paragraph 3) has been added to the draft, which, if approved, may be circulated to the Honourable Member.

A.V.S.—28-2-13.

F.E.M.—28-2-13.

Honourable Member—

I should not have thought that Act No. III of 1905 was relevant. The draft is however put up in accordance with the recommendation of Revenue Secretary.

H.E.C.—1-2-13.

I approve of the draft.

H. A. S[tuart]—3-3-13.

Under Secretary—

The draft letter to the Advocate-General may now issue.

G.V.—4-3-13.
P.K.S.—4-3-13.

Issue.

F.E.M.—4-3-13.

[Letter issued as R.O.C. No. 942 I 12, dated 7th March 1913.

From the Government Solicitor, Madras, No. 389, *dated* 29*th March* 1913.

Under Secretary—

The Advocate-General is of opinion—

(*a*) that the charge cannot be recovered as a tax as the Madras Irrigation Cess Act VII of 1865 which is the only Act that empowers the levy of a water cess is restricted to water used for irrigation,

(*b*) that in this case, there being no contract to pay, the Government are not at liberty to withhold the water in order to compel the railway company to enter into an agreement to pay for it.

(*c*) that it can hardly be suggested that there was no consent of Government, express or implied, for the erection of the pumping station, as the company and the Government are closely connected and Government sanction has to be sought at every turn, that whether such consent is evidenced by the Government Order (of 1879) or by subsequent correspondence or by both is immaterial; and that the legal effect in both cases is the same.

G.O. No. 879-A.R., dated 15th November 1879.

(*d*) that one of the two following consequences must ensue:—

(i) There may have been a license express or implied and as the licensee acting upon the license has executed a work of a permanent character and incurred expense in the execution, the license cannot under section 60 of the Easements Act be revoked [This is the position taken up by the Railway Board.]

(ii) If on the other hand an easement has been created, it cannot, under section 39 of the Act, be put an end to, unless the power to revoke was expressly reserved.

(*e*) that the rights of the railway company as to a supply of water in times of scarcity should be subject to the reservations in section 2 of the Easement Act.

The old Carnatic Company was acquired in 1890 and the present company have acquired a new easement.

The Advocate-General has not considered the question whether the present company is a new company and not the successor or assignee of the company in existence in 1879, which was under the orders of the Honourable Member purposely omitted from Memorandum R.O.C. No. 942 I/12, dated 16th November 1912. It is for consideration if this aspect of the question should be pointed out to the Advocate-General.

Submitted that the file may be sent to Revenue for remarks.

G.V.—4-4-13.
P.K.S.—4-4-13

Secretary—

F.E.M.—5-4-13.
H.E.C.—8-4-13.

To the Revenue Department u.o.

REVENUE DEPARTMENT.

Under Secretary—

The remarks of this department are invited on the question whether it is necessary to make a further reference to the Advocate-General asking him to consider the question that the present company is a new company and not the successor or assignee of the company in existence in 1879. If the present company were the successor or assignee of the company of 1879, then under section 19 of Act V of 1882 the easements rights of the latter would accrue in favour of the former. The present company having been in existence and having exercised the right of taking water free of charge in the same manner as the old company for over twenty years would seem to have acquired a fresh right of easement—*vide* section 15 of the Easements Act V of 1882. If this view be held correct, there is no need to consult the Advocate-General. The file may, it is submitted, be returned with the remarks of this department. The Irrigation Bill under the consideration of Government does not provide for any remedy in this case. Section 135 of the Railways Act IX of 1890 (India) provides for the liability of the railway administration to the payment of taxes which may be imposed by "local authorities" such as municipal councils, taluk boards. But there is no provision for paying water-rate. When the Irrigation Bill passes into law, there is sufficient protection against any abstraction of water in future. But there is none in respect of old cases where the right to water has been

Page 173 of Volume I of Madras Code.

Vide marginal remarks at page 17 *supra*.

Page 471 of Volume I, Madras Code.

A (marginal mark)

Page 279 of Unrepealed General Acts, Volume IV.

utilized for over 12 years, unless a fresh provision be made in Act VII of 1865 to the effect that when water is taken from any irrigation work (as defined in the Irrigation Bill) for other purposes than irrigation, viz., for factories, mills, railway works, etc., the Government may prescribe the rules under which and the rates at which water-cess shall be levied.

Page 297 *et. seq.* of Madras Code, Volume II.

B.M.R.—16-4-13.
R.S.—21-4-13.

Secretary—

H.A.W.—25-4-13.

Surely the view taken in the office-note at **A** on page 8 above is not correct. The last clause of section 15 prescribes 60 years, not 20, in the case of property belonging to Government.

If the present company can be deemed to be a new company, then it would seem that they cannot rely on the argument in paragraph 4 of the Advocate-General's opinion and whether the argument in paragraph 5 will avail seems to depend on the length of time required to acquire an easement.

L.M.W.—26-4-13.

Secretary—

It is regretted that the view given at **A** on page 8 above is incorrect. The period as against Government is 60 years as pointed out by the Secretary.

H.A.W.—30-4-13.

A further reference to the Advocate-General would seem to be advisable.

L.M.W.—30-4-13.

To the Public Works Department (Irrigation) u.o.

Public Works Department
(Irrigation Branch).

Under Secretary—
Secretary—

A draft official memorandum to the Government Solicitor is put up and may be sent to the Revenue department for acceptance.

G.V.—8-5-13.
P.K.S.—8-5-13.

F.E.M.—10-5-13.
H.E.C.—10-5-13.

To the Revenue Department u.o.

Revenue Department.

Under Secretary—

Please see the Secretary's remarks on the previous page. The draft official memorandum may, it is submitted, be accepted in this department.

R.S.—16-5-13.

Accepted.

H.A.W.—17-5-13.

To the Public Works Department (Irrigation) u.o.

Public Works Department
(Irrigation Branch).

Under Secretary—

The official memorandum may now issue.

A.V.S.—19-5-13.

Issue.

F.E.M.—19-5-13.

[Issued as Official Memorandum No. 628 I./13-1, dated 21st May 1913.]

From the Superintending Engineer, VI Circle, No. 1044 *C.E.*/1668, *dated* 16*th July* 1913.

[To the Superintending Engineer, VI Circle, dated 29th July 1913, No. 628 I./13-2.]

[*Official Memorandum to the Advocate-General, dated* 20*th August* 1913, *No.* 628 *I.*/13-3.]

Under Secretary—

No reply has been received from the Advocate-General. For orders whether he may be reminded again now.

T.K.G.—5-9-13.

G.V.—5-9-13.

On 20th instant.

F.E.M.—8-9-13.

Under Secretary—

A draft official memorandum reminding the Government Solicitor is put up for approval and orders to issue.

T.K.G.—20-9-13.

G.V.—20-9-13.

F.E.M.—22-9-13.

[Official memorandum to the Government Solicitor issued as No. 628 I./13-4, dated 24th September 1913.]

From the Government Solicitor, dated 21*st October* 1913, *No.* 1097.

Under Secretary—

Secretary—

The Advocate-General is of opinion that it is immaterial whether the present company is a new company or not, provided there has been a transfer by the old company, to the new, of all the property of the old company and that he adheres to his former opinion. From the third clause of the contract dated 24th November 1890 with the South Indian Railway Company, it will be seen that the undertaking of the old company on the 31st December 1890 otherwise called "the purchased railway," together with all works connected therewith, were handed over by the Secretary of State to the new company from 1st January 1891. Though a transfer of property of the old company has been effected, the transfer was not from the old to the new company. It is not known if this aspect of the case would affect the question at issue. In his note dated 27th October 1912 the Honourable Member refers to the case of over-bridge at Bezwada. Presumably he has in view the subject of level

A | crossings and over-bridges in the Madras city. It is understood from the Public Works Department, (Railway) that in that file the Advocate-General has given it as his opinion that the present company, being a new one, was not bound by the acts of the old company.

As the file which is now with Local and Municipal may throw some light on the subject, it is submitted that that department may be requested to link that file to the present case.

P.K.S.—12-11-13.

F.E.M.—12-11-13.
H.E.C.—12-11-13.

To the Local and Municipal Department u.o.

LOCAL AND MUNICIPAL DEPARTMENT.

Deputy Secretary—

The file referred to at **A** above relating to over-bridges on the South Indian Railway level crossings in the city of Madras was sent to Public Works Department u.o. on the 18th instant for acceptance of a draft letter to the Agent, South Indian Railway. The present file may lie over pending the receipt of that file from the Public Works Department.

T.B.R.—20-11-13.

S. KRISHNAMA ACHARI—20-11-13.

The file referred to has gone back to Public Works Department. So this may go back.

F. B. EVANS—25-11-13.

To the Public Works Department u.o.

PUBLIC WORKS DEPARTMENT.

Deputy Secretary—

The file relating to the level crossings at Madras required by Irrigation is linked. The files may now be sent to Irrigation and they may be requested to return the linked * file at an early date.

* File returned to Public Works Department.

M.A.R.—4-12-13.

D.M.—4-12-13.

To the Public Works Department (Irrigation) u.o.

PUBLIC WORKS DEPARTMENT
(IRRIGATION BRANCH).

Under Secretary—

Secretary—

The file relating to the provision of over or under bridges in place of the existing level crossings in the City of Madras is † linked. The question was there raised as to whether the South Indian Railway Company, Limited, were liable to provide bridges for the level crossings at Whannel's road and Sydenham's road. The facts in that case were as follows.

† Since dislinked and returned to Public Works Department.

2. In 1873 when the line from the Madras Beach to the south was under construction, the Agent of the Carnatic Railway Company applied for the sanction of Government to substitute level crossings for over-bridges at these roads, and on behalf of the company, undertook to replace the level crossings by over-bridges at the company's cost, in the event of the change being subsequently considered desirable by Government. In G.O. No. 3081 C.C., dated 29th December 1873, Government sanctioned the proposal on the condition that the level crossings should be replaced

by over-bridges if the change was considered necessary at some future time. Subsequent to the Carnatic Railway Company the system was worked by the Great South Indian Railway Company and then by the present South Indian Railway Company. The question was raised in 1909 as to whether the present company was liable to provide the over-bridges promised by the Carnatic Company at their cost. The Agent contended that the transfer to the Secretary of State for India in 1890 of the line formerly worked by the Carnatic Railway Company rendered the Government of India liable for the cost. The then Advocate-General (the Hon'ble Mr. P. S. Sivaswami Ayyar) who was asked for an opinion as to whether the present company was or was not liable to carry out the obligation of the Carnatic Railway Company observed as follows :—

"The undertaking given to the Government by the Agent of the Carnatic "Railway Company, on the 4th December 1873, to replace the level crossings at "Sydenham's road and Whannel's road by over-bridges whenever required by the "Government to do so, was no doubt a contract binding on that company. Upon the "amalgamation of the Carnatic Company, with the Great Southern India Railway "Company, all covenants, contracts, obligations and liabilities of the Carnatic Company "were transferred by section 7 of the South Indian Railway Act, 1874, to the South "Indian Railway Company. But upon the purchase of the South Indian Railway "system in 1890 by the Secretary of State these obligations and liabilities necessarily "ceased to exist. The contract of the 24th November 1890 is between the Secretary "of State and the new South Indian Railway Company and not with the old South "Indian Railway Company, incorporated under the Act of 1874 (see clause 1 "(*b*) and (*c*) of the indenture). The contract with the present South Indian Railway "Company is merely for the working and maintenance of the open system and the "completion of the construction of the unfinished railway. The ownership of the "railway is vested in the Secretary of State and the company is not even a lessee of "the railway. No obligation can be laid upon the new company, except such as can "be found within the four corners of the indenture of the 24th November 1890. I "am unable to find anything in this indenture which can be held to impose any obli- "gation upon this company to carry out at its cost the undertaking given in 1873 by "the (now defunct) Carnatic Railway Company. The present company as contractors "may, under clause 27 of the indenture, be required by the Government to carry out "the additions that may be necessary for the safety of the public, but the funds "necessary for the execution of such work have to be supplied by the Secretary of "State (see also clauses 46 and 47 of the indenture)."

"I am therefore of opinion that the Agent of the South Indian Railway Company "is right in his contention that the cost of the construction of the proposed over- "bridges must be met by the Government and not by the railway company."

It will be seen from the above that upon the purchase of the railway company by the Secretary of State in 1890 the obligations and the liabilities of the previous company necessarily ceased to exist, that the ownership of the property is vested in the Secretary of State, that the contract with the present company is merely for the working and maintenance of the open system, that the company is not even a lessee of the railway and that the cost of the proposed over-bridges should be borne by Government.

2. In the case now under consideration, Government in G.O. No. 879 A.R., dated 15th November 1879, accorded sanction to work out in detail an estimate for a scheme for laying down pipes between Trichnopoly junction and Wyacondan channel, for supplying the station with water for locomotive purposes. Acting on this authority the company sank a well on the bank of the channel from which water was pumped into a reservoir and tank in the station yard and the pumping installation has since then been permanently retained by the railway company. In 1911 the Government directed the levy of a charge for all water so taken by the company, but the Railway contended that they should be exempted from payment of the charges on the ground that the order of 1879 authorised the installation of the pumping station and that as it did not contain any reservation clause, they were

G.O. No. 289 I., dated 16th September 1911.

entitled to the full use of the water, as they had incurred expenditure on the erection of a station which is a work of a permanent character. The Advocate-General who was asked for an opinion on the subject stated that as the company had executed a work of a permanent character and incurred an expenditure in execution thereof and enjoyed the right for over 30 years without interruption, the license of 1879, whether express or implied, could not, under section 60 of the Easements Act, be revoked (this is also the position taken by the Railway Board). The Advocate-General also stated that if on the other hand, an easement had been created, it could not, under section 39 of the Act, be revoked, unless such power was expressly reserved. As he did not consider the question whether the present company was a new company and not the successor or assignee of the company of 1879 a further reference was made to him in Official Memorandum No. 628/13, dated 21st May 1913. It was also pointed out to him that if the present company were deemed to be a new company, his opinion that there might have been a license, express or implied, or that an easement might have been created seemed inapplicable, while if they are deemed the successors of the old company, they should have exercised their rights for a period of 60 years to acquire an easement. He has stated in reply that it is immaterial whether the present company is a new one or not, provided that there has been a transfer by the old company to the new, of all the property of the old company and that for the rest he adheres to his previous opinion.

4. This opinion of the Advocate-General seems to be rather at variance with that given by the Hon'ble Mr. P. S. Sivaswami Ayyar referred to above. The Hon'ble Mr. P. S. Sivaswami Ayyar considered that when the Secretary of State purchased the system in 1890, the obligations and liabilities of the previous company necessarily ceased to exist and that the ownership of the railway was vested in the Secretary of State. He also stated that the contract with the present company was merely for the working of the maintenance of the open system. There has not been a transfer of property from the old company to the new one, as the property belongs to the Secretary of State and as the present company is not even a lessee. It would also appear that as the rights and liabilities of the previous company ceased to exist when the property was purchased by the Secretary of State and as the present company is a new company, the Advocate-General's opinion as to license and easement would seem inapplicable.

Under the view taken by the Hon'ble Mr. P. S. Sivaswami Ayyar it would appear that a charge can be rightly imposed on the Railway for the water taken. It is submitted that the case may again be referred to the Advocate-General for further opinion and his attention may be invited to the opinion of the Hon' ble Mr. P. S. Sivaswami Ayyar quoted above. The file may be submitted for the orders of the Honourable Member and the Hon'ble Mr. P.S. Sivaswami Ayyar as to the legal aspect of the case.

The cases are not quite the same and probably both opinions are correct.

F.E.M.

G.V.—9-12-13.

P.K.S.—10-12-13.

F.E.M.—10-12-13.

Honourable Member—

Hon'ble Mr. P. S. Sivaswami Ayyar, C.S.I., C.I.E.—

The opinion now given appears to be expressed in a somewhat ambigious fashion. I do not think any further reference to the Advocate-General would do any good.

I would take this opportunity of urging that apart from all legal considerations the fair and reasonable course to adopt is that suggested by me at page 5 of notes to G.O. No. 289 I., dated 16th September 1911.

It may be desirable to enforce the principle that the railway company should pay for water drawn from Government sources, but in this case the railway had permission to take it free originally and I think we should have a very bad case in equity, if not in law.

H.E.C.—10-12-13.

I am quite willing to make only a nominal charge if we are asked to do so, but I want a recognition of our rights. I would explain the facts more clearly to the Advocate-General, send him a copy of his predecessor's opinion about the obligations and rights of the present company and ask him whether he still adheres to the opinion that that company has a right to the supply of water free of charge

H. A. S[tuart]—11-12-13.

I think there has been considerable confusion in the treatment of this question. As the present South Indian Railway Company cannot claim to stand in the shoes of the old company, the question whether there was a license to the old company and it was irrevocable is immaterial. Assuming that there was an irrevocable license, it came to an end when the Secretary of State purchased the old concern. The only question now is whether under the existing contract the Secretary of State has expressly or impliedly granted any right to the use of water. It cannot possibly be an irrevocable license now, because the present company, a totally new and distinct concern unconnected with the old company, has executed no work after the date of the contract.

Verify.
P. S. S[ivaswami Ayyar]—13-12-13.

If the present company is to be supposed to have a license (though not irrevocable), it can of course be revoked. But can it be contended that there is a grant of water-rights to the present company, not in the nature of a license, but in the nature of an easement (either in gross or appurtenant to the land). As the railway company are merely contractors for working the system and there is nothing in the way of a demise of any lands to the company, I do not think the right obtained can be an easement appurtenant to any land. Section 13 (*a*) of the Easements Act cannot apply, because no immoveable property has been transferred and the right cannot be said to be necessary or indispensable. Section 13 (*b*) cannot apply, because in addition to the other reasons given with reference to clause (*a*), it is not a continuous easement. Is there then an easement in gross to take water from the channel for working the railway. Apparently there is no express mention of any such right in the contract. The point which has really to be considered is whether by the contract there is any implied grant of a right to all such facilities in the way of supply of water, etc., as the old company had. All works connected with the purchased railway are under the contract handed over to the company. Would the company have the right to pump water to their works from the channel just as they have the right to pump water from a well in the station-yard? I am inclined to think that probably they have this right. I must confess, however, that I have not been able to make more than a cursory examination of the subject. If the company has the right to take water from the channel, we cannot levy a charge for the water. I have indicated the way in which I think the question should be approached. The reference to the Advocate-General may raise all the questions suggested above. Let me see the terms of the reference to the Advocate-General.

P. S. S[ivaswami Ayyar]—13-12-13.

Under Secretary—
Secretary—

A draft official memorandum to the Government Solicitor in accordance with the above note is put up for approval.

2. With reference to the marginal remark of the Hon'ble Mr. Sivaswami Ayyar on page 14 of the notes, it is submitted that no definite statement to the effect can be traced. In paragraph 3 of his letter No. A.C. 1485-1-83, dated 4th July 1910, printed on page 4 of G.O. No. 289 I., dated 16th September 1911, the Agent, South Indian Railway, has stated as follows :—

"On the permission granted in the Government Order referred to (G.O. "No. 879 A.R., dated 15th November 1879), the railway administration expended "Rs. 33,000 on a pumping station and for nearly 30 years has enjoyed the right to "draw a portion of the water-supply from the channel for the cost of pumping."

It is inferred that the present company has not constructed any work after the date of contract, *i.e.*, 24th November 1890.

The draft may be sent to Public Works Department (Railways) for acceptance prior to circulation.

P.K.S.—20-12-13.

F.E.M.—20-12-13.
W. M. Ellis—20-12-13.

To the Public Works Department (Railways) u.o.

Public Works Department
(Railways).

Deputy Secretary—

The draft may, it is submitted, be accepted and the file returned to Irrigation. From the Collector's letter No. Ref. on C. 1134, Rev., dated 2nd March 1910, on page 2 of G.O. No. 289 I., dated 16th September 1911, it would appear that the steam-pump was installed at Palakarai in 1881.

M.A.R.—23-12-13.

Accepted.

D.M.—23-12-13.

To the Public Works Department (Irrigation) u.o.

Public Works Department
(Irrigation Branch).

Secretary—

Honourable Member is on tour. The draft may be circulated to the Hon'ble Mr. P. S. Sivaswami Ayyar with reference to the last sentence of his note, dated 13th December 1913, on page 15 *ante*.

P.K.S.—26-12-13.

Draft to the Hon'ble Mr. Sivaswami Ayyar for acceptance.

W.M.E.—29-12-13.
P. S. S[ivaswami Ayyar]—2-1-14.

Secretary—

The draft may be circulated to the Honourable Member for approval.

P.K.S.—3-1-14.

To the Honourable Member—

W.M.E.—3-1-14.
H. A. S[tuart]—4-1-14.

Issue as altered by the Honourable Member (2).

P.K.S.—5-1-14.

F.E.M.—5-1-14.

[Issued as Official Memorandum No. 628 I./13, dated 9th January 1914.]

Under Secretary—

A draft reminder to the Government Solicitor inquiring when the further opinion of the Advocate-General called for in Official Memorandum No. 628 I/13, dated 7th January 1914, may be expected is submitted for approval.

V.K.—20-2-14.

It is for consideration whether the Advocate-General may not be reminded if a reply is not received within a fortnight. As it is he has had but a month.

P.K.S.—10-2-14.

Issue reminder.

F E.M.—10-2-14.

From the Superintending Engineer, VI Circle, dated 24th February 1914, *No.* 286 *C.E.*/1668.

Under Secretary —

The Superintending Engineer, VI Circle, enquires if any decision has been come to regarding the question of the charges to be levied on the South Indian Railway for the water taken from the Wyacondan channel. A draft memorandum informing the Superintending Engineer that the question is still under the consideration of Government is put up for approval and orders to issue.

T.K.G.—26-2-14.

P.K.S.—26-2-14.

F.E.M.—26-2-14.

[Issued as No. 628 I/13-11, dated 27th February 1914.]

From the Advocate-General, dated 2nd March 1914, *No.* 58.

Under Secretary—

Secretary—

The Advocate-General is now of opinion that no question of easement or license arises in favour of the South Indian Railway Company. He says that the purchase of the old company's undertaking by the Government on the 24th November 1890 and the new company's contract with the Government on that date have completely altered the position. A draft reply to the Railway Board informing that the Government are unable to revise the orders issued in G.O. No. 289 I., dated 16th September 1911, is submitted which, if approved, may be sent to the Public Works Department and Revenue for acceptance prior to circulation to the Honourable Member, the Hon'ble Mr. P. S. Sivaswami Ayyar and the Hon'ble Sir John Atkinson.

P.K.S.—13-3-14.

F.E.M.—13-3-14.

W. M. Ellis—13-3-14.

To the Public Works Department } *u.o.*
,, *Revenue Department* }

Public Works Department.

Deputy Secretary—

The draft order may be accepted in the Public Works Department and the file passed on to Revenue.

2. In support of the statement in the draft that, upon the purchase of the South Indian Railway system on the 24th November 1890 by the Secretary of State, the rights and liabilities of the previous company necessarily ceased to exist, the Railway Board may perhaps be referred to paragraph 3 of their own letter No. 1375 R.C., dated 27th May 1912, written in connection with the liability of the present company to provide certain level crossings at Madras.

P.R.—17-3-14.

This need not be referred to.
D. Marshall—18-3-14.

Accepted in the Public Works Department (Railway).

D. Marshall—18-3-14.

To the Revenue Department u.o.

Revenue Department.

Under Secretary—

Reference is solicited to the Honourable Member's remarks, dated 5th April 1912, at page 7 of the notes in the linked file No. I where Honourable Member observed that he would drop the proposal to charge the Railways for water taken from Government sources. The Hon'ble Sir Harold Stuart is not disposed to make any concessions to the South Indian Railways. In the draft it is proposed to inform the Railway Board on the Advocate-General's opinion that the Government are unable to revise the orders issued in G.O. No. 289 I., dated 16th September 1911, directing the levy of charge for water drawn by South Indian Railway Company for locomotive purposes from the Wyacondan channel. The draft may be accepted in this department.

R.S.—20-3-14.

Secretary—

H. A. Watson—21-3-14.

The draft is accepted in Revenue but should be submitted to the Hon'ble Sir J. N. Atkinson in view of his opinion that the proposal to charge Railway Companies might be dropped.

A. Butterworth—22-3-14.

To the Public Works Department (Irrigation) u.o.

Public Works Department
(Irrigation Branch).

Under Secretary—
Secretary—

The draft may be circulated to the Honourable Member, the Hon'ble Mr. P. S. Sivaswami Ayyar and the Hon'ble Sir John Atkinson.

P.K.S.—24-3-14.

F.E.M.—24-3-14.

Honourable Member—
The Hon'ble Mr. Sivaswami Ayyar—
„ Sir John Atkinson—

W. M. Ellis—24-3-14.
H. A. S[tuart]—26-3-14.

I accept the draft. But I observe there is nothing to show that the Advocate-General has made any examination of the point raised in the last paragraph of the reference about an implied grant.

P. S. S[ivaswami Ayyar]—26-3-14.

I accept the draft as an assertion of our legal rights. As a matter of policy I still think it is desirable to deal liberally with the Railway Companies. They raise no objection to many little invasions of their strict rights by the public, the use of their bridges and the railway track as a foot path, crossing the track at places where there are no level crossings; I have known villagers supplied in famine time with water from Railway wells. In these matters I would advocate a give and take policy.

J. N. A[tkinson]—27-3-14.

Secretary—

The file may be re-circulated to the Honourable Member with reference to the remarks of the Hon'ble Sir John Atkinson.

2. It is presumed that the Hon'ble Mr. Sivaswami Ayyar does not intend that action should be taken on his remarks about the opinion of the Advocate-General.

P.K.S.—30-3-14.

Honourable Member—

W.M.E.—30-3-14.

The company has refused to come to a satisfactory settlement about the level crossings in Madras and insists on every little of its rights as to short circuiting. However I am quite willing to make a nominal charge for the water in this case if our rights are admitted and a sentence to that effect may be added to the draft.

H. A. S[tuart]—30-3-14.

Under Secretary—

Secretary—

With reference to the Honourable Member's orders *supra*, a sentence has been added after the last clause of the letter. The draft as thus altered may issue. It need not be placed on Editors' Table.

G.V.—31-3-14.

P.K.S.—31-3-14.

F.E.M.—31-3-14.

Issue.

W.M.E.—31-3-14.

[Issued as G.O. Nos. 160-61 I., dated 1st April 1914.]

Papers to be read in Proceedings

From the Secretary Railway Board No.2391 R C, dated 16-9-12

Offl.Memo to the Govt. Solicitor No.942-1/12, d/16-11-12

From the Advocate General No.690, dated 9-12-12

Memo to the Supg.Engr. Vi Circle No.942-1/12, d/14-12-12

From the Agent, S.I.Ry No. Hc 1485/1 d/ 22-1-13

To -do- 195 Ry/1, d/3-2-13

From the Supg.Engr. Vi Circle No. 211 CE/1668, d/2-2-13

To the Advicate General R.O.C.No.942-1/12, d/5-3-13

From the Govt.Solicitor No.389 d/29-3-13

To -do- 628-1/13, d/21-5-13

From the Supg.Engr. Vi Circle No.1044 CE/1668 d/16-7-13

To -do- 628 1/13, d/29-7-13

To the Advocate General No. 628-1/13 d/ 20-8-13

-do- 24-9-13

From the Govt. Solicitor No.1087 d/21-10-13

From the Supg.Engr. Vi Circle 176 C E/ 1668, d/5-12-13

To -do- 628-1/13-7 d/ 9-1-14

To the Govt. Solicitor No. 628-1/13-10, d/ 10-2-14

To the Supg.Engr. Vi Circle No.286 C E/1668, d/ 24-2-14

To -do- 628-1/13 1, d/27-2-14

From the Govt. Solicitor No.208, dated 3-3-1914.

Print

pp 14-15

1682 6

PUBLIC WORKS DEPARTMENT,

IRRIGATION BRANCH.

Tabling Abstract.

Water drawn by the S. I. Ry. Company

Ordered that a letter be sent to the Railway Board stating that the Governor in Council is unable to revise the orders issued in G.O. No. 289 I of 16.9.11 re: the liability of the S. I. Ry. Co for payment for water drawn for Railway purposes from the Wyakondan channel Trichinopoly district

Cross References.

Water & wells
Canals & channels
Trichinopoly.

Read the following :—

Flag T

G.O. No. 289-I, dated 16th September 1911

For 'read' Papers - vide attached sheet

6289/11

Circulated to

ORDER—No. 160 I, dated 1.4.14

Press

Ordered that the following reply be sent :

No. 161 I, dated 1.4.14

DESPATCHED 2 APR 1914

Print notes

To the Chief Engineer for Irrigation
" Supdg. Engineer, VI circle
" Board of Rev (Rev: Settl)
" Rev. dept
" P. W. D. m/s

with copy of letter

Not E.T.

Affd 19.5.14

Letter to the Railway Board to issue on m/s

To

The Secretary,

Railway Board,

S i m l a.

Sir,

In reply to your letter No.2391/RC. dated 16th Septr.1912 on the subject of

11/8/43

[illegible]

208

of the liability of the South Indian Railway Co., for payment for water drawn for Railway purposes from the Wyacondan Channel, Trichinopoly District, I am directed to say that, upon the purchase of the South Indian Railway system on the 24th November 1890 by the Secretary of State, the rights and liabilities of the previous Company necessarily ceased to exist, that the ownership of the property is vested in the Secretary of State, that the contract with the present Company is merely for the working and maintenance of the open system and the completion of the construction of the unfinished railway and that the Company is not even a lessee of the railway. The Government are advised by the Advocate Genl that whatever may have been the rights of the South Indian Railway Company before the 24th Novr. 1890, its position has now been -- completely altered; no question of

Vide Advocate-general's opinion dt 11.4.10 on p. 10 C.f.

Vide Advocate-general's opinion dt 2.3.14 p. 14 C.f.

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[illegible]

21-8

easement or license arises in ~~their~~ its favour; and the Govt. can charge for water taken from the Wyacondan channel. The Governor in Council regrets therefore that he is unable to revise the orders issued in G.O. No. 289-I, dated 16-9-1911.

Flag T

He is however willing to make a nominal charge for the water in the present case provided the rights of this Govt. to levy a charge are admitted

P.K.S. 13.3.14

13/3/14

13/3/14

31/3/14

Documents accompanying

Nil

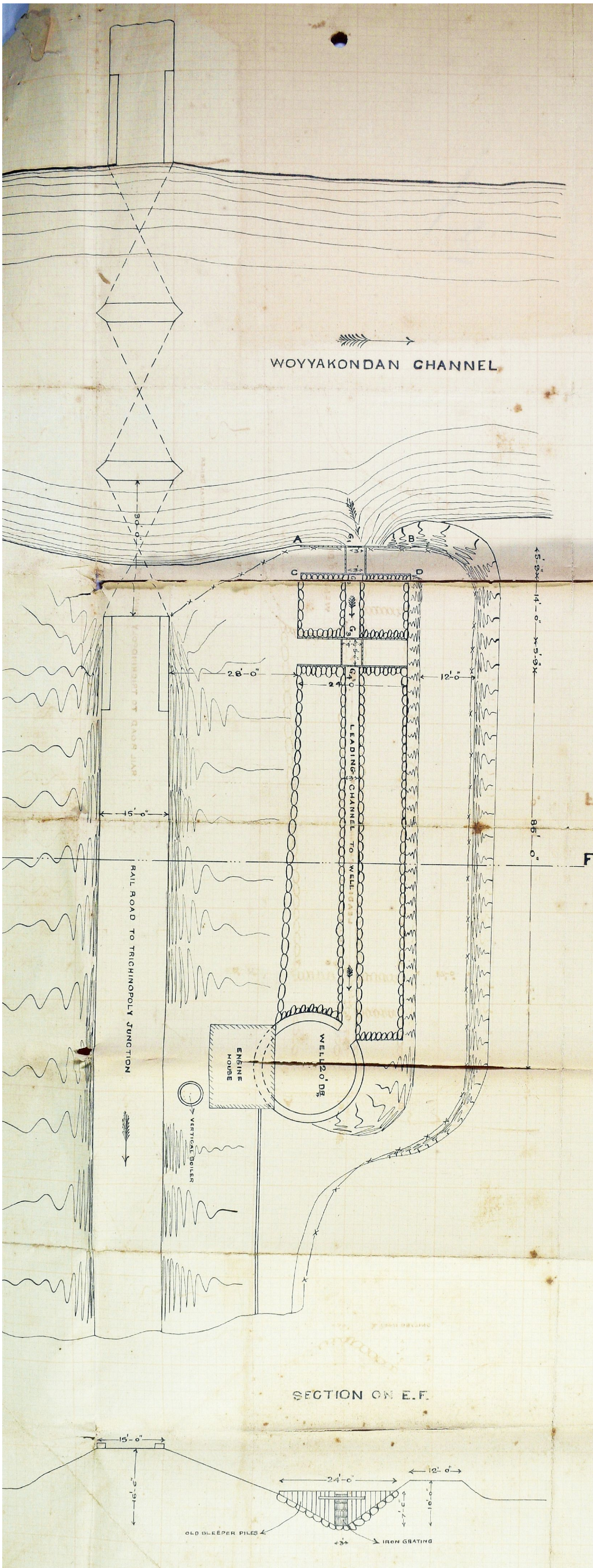
Fed 19.5.14

DESPATCHED.
2 APR 1914

180 l

SKETCH OF S·I·R· PUMPING STATION & WELL ETC. ON RIGHT BANK OF WOYYAKONDAN CHL.

SCALE 1/200



K Venkatachalam
Overseer
23.1.13.

Executive Engineer
Trichinopoly dn
27.1.13

P. W. D.
Accompaniment t... E... Receipt
ROC No. 9423/2 dated ... 2 1913

Charges for water taken by the S.I. Ry. from the Nagasamudram channel ... district

1609

C338/14.
20-1-14.

... OFFICE
24 JAN 1914
MADRAS

SURVEY OFFICE
20 FEB 1914
MADRAS

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